

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 503

CECIL REGINALD JAY, PETITIONER,

vs.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRA-
TION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 2, 1955

CERTIORARI GRANTED JANUARY 9, 1956

No. 14545

**United States
Court of Appeals**
for the Ninth Circuit.

CECIL REGINALD JAY,

Appellant

vs.

JOHN P. BOYD, District Director, Immigration
and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington
Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For the Appellant:

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For the Appellee:

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U. S. Attorney;
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JOHN W. KEANE,
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Seattle 4, Washington.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 3700

CECIL REGINALD JAY,

Petitioner,

vs.

JOHN P. BOYD, District Director, Immigration
and Naturalization Service,

Respondent.

PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner respectfully shows the court, and alleges as follows:

I.

The jurisdiction of the court arises under Title 28, United States Code, Sec. 2241 and following, in that petitioner is now in custody of respondent, the District Director, Immigration & Naturalization Service, and petitioner is restrained of his liberty under color of authority of the United States, and is retained in custody in violation of the Constitution and laws of the United States.

2.

Petitioner is a permanent resident of King County, Washington. He was born in Great Yarmouth, England, January 12, 1891; he entered the United States for permanent residence on May 9, 1914; in 1916 he enlisted in the armed services of

Canada, and returned to the United States in October, 1922, pursuant to a Presidential Proclamation, whereby all persons previously admitted to the United States for permanent residence who had thereafter departed from the United States for the purpose of enlisting in the armed services of a country allied to the United States in the war then recently concluded in which hostilities had ceased on November 11, 1918, should be readmitted to the United States without being required to reenter as an immigrant; and since said time petitioner has resided continuously in the United States.

3.

Petitioner was arrested on July 18, 1949, and charged with being unlawfully in the United States, said charge thereafter being amended to charge that petitioner was unlawfully in the United States in that he was since his entry a member of the Communist Party, i.e., that he was a member of said Communist Party prior to 1940.

4.

Hearings were held with respect to said charges and thereafter an officer of the Immigration and Naturalization Service in Seattle, acting under the direction of the respondent, John P. Boyd, issued a proposed findings of fact and conclusions of law and a proposed administrative determination that petitioner was subject to deportation from the United States, and said determination was based upon a finding of fact that petitioner had been a member

of the Communist Party of the United States for a period prior to 1940.

5.

Thereafter, the Assistant Commissioner, Adjudications Department, Immigration and Naturalization Service, Washington, D. C., made and issued an order that petitioner be deported from the United States on the ground that he was, after entry, a member of the following class:

An Alien who was a member of the Communist Party of the United States.

6.

Thereafter petitioner duly appealed from the said decision to the Board of Immigration Appeals, Department of Justice, Washington, D. C., and thereafter an order was issued by said Board of Immigration Appeals disposing of said appeal upon the merits as follows:

"It is ordered that the appeal be and the same is hereby dismissed."

7.

The purported order of deportation of petitioner, and all proceedings taken against petitioner are null and void and of no effect in that petitioner has at no time violated any condition imposed at the time of his entry, nor has any charge been made against him that he has done so, and, except as stated above, no lawful power to expel petitioner exists under the Constitution or laws of the United States.

8.

Thereafter, and on or about June 30, 1953, pursuant to the provisions of Title 8, United States Code, Sec. 1254 (a) (5), and 1254 (b) (Act of June 27, 1952, Ch. 477, Sec. 244 (a) (5); and 244 (b); 66 Stat. 214), petitioner applied to the Attorney General for discretionary relief suspending the order of deportation against petitioner; and on or about August 3, 1953, pursuant to said petition, by order of the Board of Immigration Appeals, said order of deportation was withdrawn to permit petitioner to seek discretionary relief from the Attorney General.

9.

Thereafter, petitioner presented evidence to a special inquiry officer appointed by or under the direction of the Attorney General, which evidence established to the satisfaction of said officer that petitioner had been physically present in the United States continuously for more than 10 years since the act or status which constituted the ground for the charge against him, and upon which the order of deportation was based; that throughout this period of time petitioner had been a person of good moral character, and that his deportation would result in exceptional and extremely unusual hardship to him, and that he was an alien who had been lawfully admitted to the United States for permanent residence.

10.

On or about February 3, 1954, said special inquiry officer found petitioner to be qualified for suspension

of deportation, but concluded that petitioner's application for suspension of deportation did not warrant favorable consideration. Said conclusion was purportedly based upon "confidential information," the general or particular character of which was not disclosed, nor in any manner incorporated, in the record, nor made a part of the files for consideration of this matter.

11.

Upon information and belief, petitioner alleges that the character of the so-called "confidential information" referred to in the preceding paragraph of this petition is as follows:

Without notice or hearing the Attorney General issued a list of organizations stated to be "subversive"; included among such organizations was an organization known as the "American Committee for the Protection of the Foreign Born"; said committee issued a list of persons against whom deportation proceedings are now pending, including in said list petitioner's name, and soliciting support for such persons; this list and information that support for petitioner was solicited by said committee, listed ex parte as "subversive" by the Attorney General, was circulated by or under the direction of the Attorney General among all employees in the Immigration Service and to the Board of Immigration Appeals.

Solely by reason of petitioner's name appearing on said list, his case for discretionary relief was prejudged and no fair or impartial consideration of

his case was given by said special inquiry officer, and the conclusion and decision that petitioner's case did not warrant favorable consideration was based entirely upon information outside the record and such conclusion was frivolous and capricious; and the so-called "confidential information" upon which the conclusion and decision against petitioner was purportedly based was not properly or lawfully considered by said special inquiry officer, and said information was not of a character whose disclosure to petitioner would be prejudicial in any manner to the public interest, safety or security, nor was said special inquiry officer of the opinion that such would be the case, nor did he so find or state.

12.

Petitioner appealed the recommendation of the special inquiry officer to the Board of Immigration Appeals, setting forth to said board that his deportation was unlawful, and that no fair or impartial consideration has been given his petition, and that a decision or conclusion based upon confidential information, or confidential information whose disclosure would not be prejudicial to public interest, safety or security was unlawful; but for the reasons stated in the preceding paragraph, no fair or impartial consideration of petitioner's application for discretionary relief, or his appeal was given by the Board of Immigration Appeals, and petitioner has been entirely denied any consideration of his petition for relief, nor has the Attorney General exercised his discretion with respect to petitioner's application in the manner required by law, or at all.

13.

For the reasons set forth in the preceding paragraph the Board of Immigration Appeals denied petitioner's appeal and reinstated the order of deportation against him.

14.

During the pendency of the proceedings described herein petitioner has been enlarged upon a bond in an amount and form approved by the Immigration and Naturalization Service; following the dismissal of his appeal, as alleged in the preceding paragraph, said bond has been cancelled, petitioner has been returned by his bondsmen to the custody of respondent, and is at present unlawfully and wrongfully restrained of his liberty as hereinabove alleged.

Wherefore, petitioner prays that this court issue its writ of habeas corpus, permanently discharging petitioner from the custody of respondent, or of any other persons under any warrant of deportation, and that pending hearing upon his petition, he be released upon bond, conditioned similarly to the bond upon which he was enlarged immediately prior to his present detention, and that the court grant such other, further or different relief as may be found to be just, proper and equitable in the premises.

/s/ JOHN CAUGHLAN,

Attorney for Petitioner.

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE, AND ORDER
WITH RESPECT TO RELEASE OF PETI-
TIONER UPON BOND PENDING HEAR-
ING

This matter having come on duly and regularly before the undersigned judge of the above-entitled court upon the verified petition of petitioner for a writ of habeas corpus, and it appearing to the court from consideration of said petition that petitioner is now restrained of his liberty and detained in custody by respondent, under color of authority of the United States, and it further appearing from said petition that the court should inquire into the cause and legality of said detention, and the court being advised, Now, Therefore,

It Is Hereby Ordered that respondent, John P. Boyd, District Director, Immigration and Naturalization Service, or his authorized representative, be and appear before the undersigned District Judge of the above-entitled court at the United States Courthouse, Seattle, Washington, at 3 p.m. on the 28th of June, 1954, then and there to show cause, if any there be, why the petition of petitioner should not be granted, and petitioner be permanently discharged from custody, and

It Is Further Ordered that, pending return of this order to show cause, and hearing upon the petition of petitioner, that petitioner be enlarged by respondent upon bond, conditioned similarly, and in

the same amount, as the bond upon which petitioner was enlarged immediately prior to his present detention by respondent.

Done in Open Court this 3rd day of May, 1954.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge.

~~Presented by:~~

/s/ SAUL H. LESSER,
For John Caughlan, Attorney
for Petitioner.

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

RETURN

John W. Keane states that he is an attorney in the service of the United States Department of Justice, Immigration and Naturalization Service; that in his official capacity he is authorized to make in behalf of John P. Boyd, District Director, and hereby does make the following return to the order to show cause herein.

I.

That Cecil Reginald Jay, hereinafter referred to as the petitioner, is not being wrongfully or illegally restrained by the respondent but was surrendered into the custody of the respondent on May 3, 1954, by virtue of a lawful order of deportation entered February 3, 1954.

II

The petitioner is sixty-two years of age, male, native of Great Yarmouth, England, citizen of Great Britain, who last entered the United States at Seattle, Washington, in the fall of 1921. Deportation proceedings were instituted against the petitioner on July 1, 1949, charging that he was in the United States illegally by virtue of the Act of October 16, 1918, as amended (8 USCA 137). A hearing on the charges commenced June 19, 1950. During the course of the continued hearing on December 5, 1950, the government lodged an additional charge that the petitioner was deportable by virtue of Section 22 of the Internal Security Act of September 23, 1950, which statute amended the Act of October 16, 1918, in that he had been a member of the Communist Party of the United States. During the course of the hearing the petitioner voluntarily testified that he was a member of the Communist Party of the United States from some time in 1935 to the latter part of 1940. The hearing officer found him deportable April 16, 1951. The petitioner appealed to the Board of Immigration Appeals. The Board of Immigration Appeals on December 5, 1952, affirmed the decision of the Special Inquiry Officer and the appeal was dismissed.

III.

An action for a writ of habeas corpus and petition for review was commenced in this court January 17, 1953, being Cause No. 3344. After hearing, the court denied the petition March 10, 1953. No appeal was taken from the decision of the court.

IV.

That about June 30, 1953, the petitioner filed a motion with the Board of Immigration Appeals to reopen his case to allow him to apply for suspension of deportation under Section 244(a)(5) of the Immigration and Nationality Act of 1952 (8 USCA Section 1254(a)(5)). Without passing on his eligibility, the Board of Immigration Appeals on August 3, 1953, directed the order of deportation withdrawn and the hearing reopened for the purpose of allowing the petitioner to file an application for suspension of deportation.

V.

The petitioner filed a written application for suspension of deportation on November 25, 1953. A hearing was had before Special Inquiry Officer David S. Caldwell at which time the petitioner was represented by counsel. On February 3, 1954, the Special Inquiry Officer entered a written decision pursuant to Title 8, Code of Federal Regulations, Section 242.61, denying the petitioner's application for suspension of deportation on the basis of confidential information relating to the petitioner, the disclosure of which in the opinion of the Special Inquiry Officer would be prejudicial to the public interest, safety, and security under the authority of Title 8, Code of Federal Regulations, Section 244.3. The Special Inquiry Officer further ordered the petitioner deported under the Act of October 16, 1918, as amended (8 USCA 137), as a member of a class set forth in Section 1 of said Act, as an alien

who was a member of the Communist Party. On February 17, 1954, the petitioner, through his attorney, appealed to the Board of Immigration Appeals. On April 9, 1954, in a written opinion, the Board of Immigration Appeals, after a full consideration of the evidence of record and in the light of the confidential information, concluded that the alien was not entitled to discretionary relief and dismissed the appeal. On April 20, 1954, the respondent notified the petitioner to report for deportation May 3, 1954, and this action was commenced. The record, duly certified, of proceedings on the petitioner's application for suspension of deportation, including the transcript of hearing, exhibits, opinions of the Special Inquiry Officer and the Board of Immigration Appeals, are attached to and made a part of this return, marked Exhibit A, the same as if they had been fully set out herein.

VI.

The respondent denies that the confidential information relied upon by the Special Inquiry Officer and the Board of Immigration Appeals, acting for the Attorney General, was of the character or substance alleged by the petitioner in paragraph 11 of the petition; denies that the Special Inquiry Officer or the Board of Immigration Appeals prejudged petitioner's case because of the possession of any list issued by the Committee for the Protection of the Foreign Born.

Wherefore, it is prayed that the petition for a

writ of habeas corpus be dismissed and the rule to show cause quashed.

/s/ JOHN W. KEANE,

Attorney for Respondent.

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came on for hearing on an order to show cause July 1, 1954, the petitioner appearing by counsel, John Caughlan and C. T. Hatten; the respondent, District Director, being represented by E. N. Cushman, Assistant United States Attorney, and John W. Keane, Attorney, Immigration and Naturalization Service, a return and answer having been filed by the respondent together with a certified copy of the proceedings on the petitioner's application for discretionary relief before the Immigration and Naturalization Service and testimony having been heard and briefs filed by the respective parties, and the court, after oral argument of counsel, having been fully advised in the premises and having made an oral decision on July 1, 1954, the following findings of fact and conclusions of law are hereby made pursuant to Rule 52(a) of the Federal Rules of Civil Procedure:

Findings of Fact

I.

The petitioner, Cecil Reginald Jay, is an individ-

ual seeking relief from an order of deportation and discharge from the custody of the respondent, John P. Boyd, District Director of the United States Immigration and Naturalization Service, Department of Justice, both parties reside in the Western District of Washington.

II.

The petitioner was born at Great Yarmouth, England, January 12, 1891, and entered the United States in 1921. He never naturalized or otherwise became a citizen of the United States.

III.

The petitioner was ordered deported February 3, 1954, under the Act of October 16, 1918, as amended, (8 USCA 137), as an alien who had from 1935 through 1940 been a voluntary member of the Communist Party of the United States; the fairness of the deportation proceeding has not been challenged.

IV.

On November 25, 1953, the petitioner filed a written application with the Immigration and Naturalization Service for discretionary relief under 8 USC 1254(a)(5). A hearing was held on February 3, 1954. The special inquiry officer found, "On the record, respondent appears to be qualified for suspension of deportation. However, after considering confidential information relating to the respondent, as is provided for under 8 CFR 244.3, it is concluded that the respondent's case does not warrant favorable action and that his application for suspension

of deportation be denied." He thereafter ordered the petitioner deported as recited above.

V.

The petitioner appealed to the Board of Immigration Appeals. The Board of Immigration Appeals on April 9, 1954, in a written decision, stated, "Upon a full consideration of the evidence of record and in light of the confidential information available, it is concluded that the alien is not entitled to discretionary relief," and ordered the appeal dismissed.

VI.

That the special inquiry officer and the Board of Immigration Appeals, acting for the Attorney General, exercised their independent judgment in denying discretionary relief. From the foregoing findings of fact the court does make the following:

Conclusions of Law

I.

Congress may by statute constitutionally provide for the expulsion of aliens for reasons which were not made a condition at the time of his entry.

II.

The Attorney General, under the provisions of Section 244(a)(1) of the Immigration and Nationality Act of 1952 (8 USCA 1254(a)(5)), or his authorized agent, may, after complying with all the essentials of due process of law in the deportation hearing and in the hearing to determine eligibility for suspension of deportation, in the absence of a

statutory direction or regulations to the contrary, consider confidential information outside the record in formulating his discretionary decision.

III.

The provisions of Title 8, Code of Federal Regulations, Section 244.3, should not be construed to impose implied limitations or restrictions on the special inquiry officer or the Board of Immigration Appeals but the purpose of the regulation is to indicate that confidential information which would be prejudicial to the public interest, safety, or security need not be disclosed. A special finding that such information would be prejudicial to the public interest, safety, or security is not required by the regulation.

Done in Open Court this 14th day of July, 1954.

/s/ WILLIAM J. LINDBERG,

United States District Judge.

Approved as to form:

/s/ JOHN CAUGHLAN,

Attorney for Petitioner.

Presented and approved as to form by:

/s/ [Illegible.]

Assistant United States Attorney.

/s/ JOHN W. KEANE,

Attorney, Immigration and
Naturalization Service.

[Endorsed]: Filed July 14, 1954.

[Title of District Court and Cause.]

ORDER

This matter having been heard by the court on July 1, 1954, the petitioner appearing by counsel, John Caughlan and C. T. Hatten, and the respondent being represented by F. N. Cushman, Assistant United States Attorney, and John W. Keane, Attorney, Immigration and Naturalization Service, evidence and oral argument having been considered, and the court heretofore having entered its oral opinion and stated its findings of fact and conclusions of law,

Now, Therefore, It Is Ordered, Adjudged and Decreed that the application for a writ of habeas corpus be and the same is hereby denied and the rule to show cause heretofore issued is discharged.

Done in open court this 14th day of July, 1954.

/s/ WILLIAM J. LINDBERG.

United States District Judge.

Approved as to form:

/s/ JOHN CAUGHLAN.

Attorney for Petitioner.

Presented and approved as to form by:

/s/ [Illegible.]

Assistant United States Attorney.

/s/ JOHN W. KEANE,

Attorney, Immigration and Naturalization Service.

[Endorsed]: Filed and entered July 14, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Cecil Reginald Jay, petitioner above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment denying application and petition for writ of habeas corpus, and discharging the same, and from the proceedings on which said judgment is founded, said judgment having been entered in this action of the 14th day of July, 1954.

Dated this 10th day of September, 1954.

/s/ JOHN CAUGHLAN,

Attorney for Petitioner.

[Endorsed]: Filed September 13, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 75(c) of the Federal Rules of Civil Procedure, I am transmitting herewith all of the original papers in the file dealing with the action as the record on

appeal herein from the judgment denying application and petition for writ of habeas corpus and discharging the same, and from the proceedings on which said judgment is founded, said judgment having been filed July 14, 1954, to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Petition for Writ of Habeas Corpus, filed May 3, 1954.
2. Order to Show Cause, filed May 3, 1954.
3. Marshal's Return on Order to Show Cause, filed May 6, 1954.
4. Memorandum in Support of Petition for Habeas Corpus, filed 6/7/54.
5. Return of Respondent, filed June 10, 1954, with records of Immigration and Naturalization Service, marked Exhibit "A" attached.
6. Respondent's Memorandum of Authorities, filed June 15, 1954.
7. Findings of Fact and Conclusions of Law, filed July 14, 1954.
8. Order Denying Application for Writ of Habeas Corpus, filed 7/14/54.
9. Notice of Appeal, filed Sept. 13, 1954.
10. Stipulation for Cost Bond on Appeal (\$250.00 cash by Petitioner), filed Sept. 13, 1954.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to wit:

Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me by the Appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 7th day of October, 1954.

[Seal]

MILLARD P. THOMAS,

Clerk.

By /s/ TRUMAN EGGER,

Chief Deputy.

te:s

[Endorsed]: No. 14,545, United States Court of Appeals for the Ninth Circuit. Cecil Reginald Jay, Appellant, vs. John P. Boyd, District Director, Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed October 9, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,545

CECIL REGINALD JAY,

Appellant,

vs.

JOHN P. BOYD, District Director, Immigration
and Naturalization Service,

Appellee.

CONCISE STATEMENT OF POINTS TO BE
RELIED UPON BY APPELLANT ON AP-
PEAL

1.

The Court erred in concluding that appellant could constitutionally be expelled upon grounds not made a condition at the time of his entry.

2.

The Court erred in concluding that appellant's petition for suspension of deportation could be denied on the basis of consideration of undisclosed confidential information without the determination that the disclosure to appellant of such confidential information would be prejudicial to the public interest, safety or security.

/s/ JOHN CAUGHLAN,

Attorney for Appellant.

[fol. 24] PROCEEDINGS HAD IN THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
No. 14545

CECIL REGINAID JAY, Appellant

vs.

JOHN P. BOYD, District Director, Immigration & Naturaliza-
tion Service, Appellee

Appeal from the United States District Court, for the
Western District of Washington, Northern Division.

[fol. 24a] UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

ORDER OF SUBMISSION—May 2, 1955

Ordered appeal herein submitted to the Court for con-
sideration and decision on briefs on file.

[fol. 25] UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORD-
ING OF JUDGMENT—May 10, 1955

Ordered that the typewritten per curiam opinion this
day rendered by this Court in above cause be forthwith filed
by the Clerk, and that a Judgment be filed and recorded
in the minutes of the Court in accordance with the opinion
rendered.

[fol. 26] UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

No. 14,545

CECIL REGINALD JAY, Appellant

vs.

JOHN B. BOYD, District Director, Immigration and Natural-
ization Service, Appellee

PER CURIAM OPINION—May 10, 1955

Appeal from the United States District Court for the
Western District of Washington, Northern Division.

Before Hegly, Pope and Chambers, Circuit Judges

Per CURIAM.

The appellant, a citizen of Great Britain, entered the United States in 1921, where he has since resided. From 1935 to 1940, according to his own testimony in the deportation proceedings herein mentioned, he was a member of the Communist Party of the United States. After passage of the Internal Security Act of September 23, 1950, he was ordered deported as an alien who had been a voluntary member of the Communist Party. After exhausting his administrative remedies before the Board of Immigration Appeals, appellant has attempted by petition for writ of habeas corpus in the court below to assert that he cannot be expelled for membership in the Communist Party from 1935 to 1940 since non-membership was not made a condition of his entry. The court below correctly rejected this contention. *Galvan v. Press*, 347 U.S. 522.

Appellant applied for suspension of deportation under § 244(a)(5) of the Immigration and Nationality Act of 1952. [fol. 27] (8 U.S.C.A. 1254(a)(5)), which provides that the Attorney General may in his discretion suspend deportation in certain cases. Upon hearing held on this application before a special inquiry officer, that officer denied the application reciting that the denial was on the basis of confidential information relating to the appellant, disclosure of

which, in the opinion of the officer, would be prejudicial to the public interest.

This ruling of the officer was expressly authorized by C.F.R. Title 8, § 244.3.

Appellant attacks his detention upon the ground that he was denied due process of law in the consideration of his application for suspension of deportation because of the use of this confidential information. This contention is likewise wholly without merit. *U. S. ex rel. Matranga v. Mackey*, 2 cir., 210 F. 2d 160.

The decision denying appellant's application for writ of habeas corpus is affirmed.

[fol. 28] UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

No. 14,545

CECIL REGINALD JAY, Appellant,

vs.

JONAS P. BOYD, District Director, Immigration & Naturaliza-
tion Service, Appellee

JUDGMENT—May 10, 1955

Appeal from the United States District Court for the
Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of
Record from the United States District Court for the
Western District of Washington, Northern Division, and
was duly submitted.

On consideration whereof, It is now here ordered and
adjudged by this Court, that the order of the said District
Court in this cause be, and hereby is affirmed.

[File endorsement omitted.]

27
[29] UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

ORDER DIRECTING FILING OF OPINION ON PETITION FOR RE-
HEARING—August 4, 1955

Ordered that the typewritten per curiam opinion on petition for rehearing this day rendered by this Court in above cause be forthwith filed by the Clerk.

[30] UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

No. 14,545

CECIL REGINALD JAY, Appellant,

vs.

JOHN B. BOYD, District Director, Immigration and Natural-
ization Service, Appellee

PER CURIAM OPINION ON REHEARING—August 4, 1955

Before Healy, Pope and Chambers, Circuit Judges

PER CURIAM:

By petition for rehearing appellant asserts our opinion was incorrect in stating that the special hearing officer who denied the requested suspension did so on the basis of confidential information "disclosure of which, in the opinion of the officer, would be prejudicial to the public interest." It is asserted that the findings show that the officer's order did not use the quoted words which are those used in the Regulation cited in the opinion.

The precise words of the order were: "On the record, respondent appears to be qualified for suspension of deportation. However, after considering confidential information relating to the respondent, as is provided for under CFR 244.3, it is concluded that the respondent's case does not warrant favorable action and that his application for

suspension of deportation be denied." We think that this is a statement to the effect that the hearing officer was considering the confidential information under the circumstances, upon the conditions, and in the manner provided by the regulation. He considered it "as is provided for" under the regulation.

The discretionary power granted the Attorney General is limited only by the latter's self-imposed regulations. Ac- [fol. 31] cording to *Cardi v. Shughnessy*, 347 U.S. 260, 265. Here it is apparent that the officer complied with the regulation as a matter of substance. We agree with the trial court that the regulations require no special finding in any particular words or language. We have no authority to review the discretionary determination here made. Rehearing denied.

[fol. 32] Clerk's Certificate to foregoing transcript omitted in printing.

© [fol. 33] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 9, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

29
[fol. 1] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service, Seattle,
Washington

TRANSCRIPT OF PROCEEDINGS—November 25, 1953

File E-053-646

Deportation Proceedings (Reopened)

Date: November 25, 1953.

Place: Immigration Station, Seattle.

Special Inquiry Officer: David S. Caldwell.

Examining Officer: Robert L. Needham.

Shorthand Reporter: Joseph H. Ramquist.

Language Used: English.

Respondent's Counsel: Siegfried Hesse, Attorney at
Law, 702 Lowman Building, Seattle, Wash.

Respondent: Cecil Reginald Jay.

By Special Inquiry Officer to Examining Officer and
Counsel:

Q. Are both parties ready to proceed?

A. (By both)—Yes.

By Special Inquiry Officer to Respondent:

Q. Will you please state your name for the record?

A. Cecil Reginald Jay.

Q. What is your present address?

A. 1633 Boyleston.

Q. Are you the same Cecil Reginald Jay who was last
accorded a hearing under deportation proceedings by me
at the offices of this Service in Seattle on December 14,
1950?

A. Yes.

Q. You are advised that pursuant to an order dated Au-
gust 3, 1953, the Board of Immigration Appeals directed
that the outstanding order of deportation in your case be
withdrawn and that the proceedings be reopened to afford
you an opportunity to petition for suspension of deporta-

tion pursuant to Section 244(a)(5) of the Immigration and Nationality Act of 1952. Do you understand?

A. Yes.

Q. At this hearing is it your desire to be represented by Siegfried Hesse?

A. Yes.

By Special Inquiry Officer to Counsel:

Q. Will you please state your name and business address for the record?

A. Siegfried Hesse, attorney at law, 702 Lowman Building, Seattle.

Q. And you have filed notice of appearance at this hearing?

A. Yes.

[fol. 2] Q. Are you ready to proceed with the hearing at this time?

A. I am.

By Special Inquiry Officer to Respondent:

Q. Are you prepared at this time to submit an application for suspension of deportation pursuant to Section 244 of the Immigration and Nationality Act?

A. I am.

Q. Are you also prepared at this time to submit documents in support of this application?

A. Yes.

By Counsel: There are two former employees and one former landlord whom we have not been able to contact yet.

By Respondent: The two former employees would cover the residence period also. Would that be sufficient by both of the people? I was employed as a manager.

By Special Inquiry Officer to Respondent:

Q. What period of time would that cover?

A. That was for the period up until about the 1st of November last year from May.

Q. A period of about seven months?

A. Yes. The other one is from May up to the present. That is, the place has been sold and just changed hands and

the original owner is out of town most of the time. He told me he was going to send it.

Q. You have taken steps to secure those documents?

A. Yes.

By Counsel: I would like, if it is agreeable with counsel for the government, to have it stipulated that they be entered later.

By Examining Officer: I will agree to that.

By Special Inquiry Officer: The following application, together with the documents submitted by the respondent, will be received in evidence as follows:

Reopened Exhibit A—Application for suspension of deportation executed by the respondent at Seattle, Washington on November 25, 1953.

Reopened Exhibit B—Affidavit of one Ray C. Robert, executed November 20, 1953 at Seattle, Washington, relative to the respondent's residence and good moral character from 1934 to 1953.

[fol. 3] *Reopened Exhibit C*—Affidavit of one Rolla V. Houghton, an attorney at law, executed November 20, 1953 at Seattle, Washington relative to the respondent's residence and good moral character during the period from July, 1934 to November, 1953.

Reopened Exhibit D—Affidavit of one J. R. Adams, Assistant Executive Director of the Seattle Housing Authority executed at Seattle November 6, 1953 relative to the respondent's employment by that Authority from June 16, 1944 until December 28, 1950.

Reopened Exhibit E—Affidavit by one J. R. Adams, Assistant Executive Director of the Seattle Housing Authority, executed at Seattle, Washington on November 5, 1953 with respect to the residence of the respondent in Seattle from October 15, 1943 through January 25, 1950.

Reopened Exhibit F—Letter on the stationery of the Seattle Police Department dated November 6, 1953, reflecting that a search of their files for the past seven year period has revealed no arrest record in the name of the respondent.

Reopened Exhibit G—Letter on the stationery of the King County Welfare Department, dated November 16,

1953, indicating that the respondent has received no assistance from the King County Welfare Department.

By Special Inquiry Officer to Respondent:

Q. Now, then, you say you have two other affidavits from places of your employment since 1950?

A. In 1943, that is the whole ten years. That employment record starts in June, 1944. Prior to that I was with Pacific Huts, which is non-existent now. I have been trying to get in touch with somebody with Pacific Huts during that period.

Q. So in effect the period of your employment from 1943 to June, 1944 is trying to be obtained. What about your employment and residence—or rather, your employment after you left the housing Authority in 1950?

A. There was a period when I was unemployed, and then after that I managed an apartment house on 23rd North, and I am now managing the one where I am at now, and this Ed Chinn who used to own the other apartment, the Rosemont, I haven't been able to get in touch with him. He has a cafe in Renton. I phoned his wife and she told him about it.

Q. So in effect, you are trying to contact this party with respect to your employment since 1950—December, 1950—with the exception of your unemployment?

A. And also the residence.

Q. Then it would appear that it would be three employment records and two residence records which you are in the process of obtaining now, is that right?

A. Yes.

[fol. 4] Q. In agreement between the government examiner and respondent's counsel, the three employment records as well as the residence records which the respondent is attempting to obtain, when received, will be received in evidence in the order of their receipt and marked *Reopened Exhibits H, I, J, K, & L*. Do you understand?

A. Yes.

(Examining Officer examines the exhibits.)

By Special Inquiry Officer to Examining Officer:

Q. Does the government have any objection to the re-opened exhibit- A to G?

A. I have no objections to these exhibits.

By Special Inquiry Officer to Counsel: You may proceed, Mr. Hesse?

By Counsel to Respondent:

Q. Mr. Jay, when did you first come to the United States?

A. I think it was May 9, 1914.

Q. Where did you come from?

A. Canada.

Q. Were you born in Canada?

A. No.

Q. Where were you born?

A. England.

Q. How long had you been living in Canada?

A. I should say—prior to that, you mean?

Q. Yes.

A. I am not so sure. Maybe one or two years.

Q. After entering the United States in 1914, have you left the United States since that time?

A. Yes.

Q. When was that?

A. December, 1915.

Q. What was your purpose in leaving?

A. To join the Canadian Army.

Q. Did you join the Canadian Army?

A. Yes.

Q. Where did you serve in the Canadian Army?

A. In France and Belgium.

[fol. 5] Q. When were you discharged from the Canadian Army?

A. Somewhere around 1920, in the fall of 1920 or 1921. I was discharged in 1920 and then I served in the reorganized militia in New Westminster, B. C.

Q. When did you next seek to enter the United States?

A. Either October, 1921 or 1922.

Q. Do you have a paper by which you could refresh your recollection?

A. Yes.

By Examining Officer: I believe the record shows the fall of 1921.

By Respondent: October, 1921.

By Examining Officer. I have a note that it was fall of 1921.

By Respondent: Yes.

By Counsel to Respondent:

Q. Then you reentered the United States in the fall of 1921?

A. Yes.

Q. Have you ever left the country since that date?

A. No.

Q. Have you been a permanent resident of the United States since that date?

A. Since 1921.

Q. Have you ever been a member of the Communist Party?

A. Yes, I was.

Q. Approximately how long were you a member of the Communist Party?

A. I can't remember definitely, 1936 to 1937. I am certain I was in it no longer than 1941.

Q. The outside limits of membership would be somewhere around 1936 to 1941; or it could be less than that?

A. Yes. I have nothing else to go by.

Q. Have you ever been a member of the Communist Party since 1941, in any event?

A. No.

Q. What other organizations have you belonged to since 1944?

A. Well, I belong to the Canadian Legion and the union, the Building Trades Union.

Q. Any other organizations that you can think of?

A. I joined the Technocrats for a month or two.

[fol. 6] Q. Do you remember what year that was?

A. I can't remember what year.

Q. Was it early 1940 or late 1940?

A. Yes, it was when the Technocrats just started up in the University District. I can't place that exactly.

Q. In any event it was in the early '40's?

A. Yes.

Q. What has been your employment for the past ten years?

A. Well, I went into war work, Pacific Huts, and I think I was there about a year.

Q. What type of work did you do there?

A. Laborer at first, and when I finished I was promoted to supervisor.

Q. Thereafter, where did you work?

A. I started work at Seattle Housing.

Q. How long did you work there?

A. From June, 1944 to December, 1950.

Q. What was the nature of your employment with the Seattle Housing?

A. Maintenance Supervisor.

Q. What did that involve?

A. Supervise all the maintenance work in the project. It was the biggest project finally. Supervising renovation, painting, plumbing, electrical work and inspect all the apartments, giving an estimate of the cost of repair.

Q. After leaving Seattle Housing where have you worked?

A. I didn't do much at all after leaving Seattle Housing. I felt kind of discouraged.

Q. Immediately after leaving Seattle Housing?

A. Yes.

Q. What has been your employment since?

A. Apartment house manager.

Q. In other words you have been doing essentially the same kind of work as you were while at Seattle Housing, inspecting of apartments?

A. Yes.

Q. What is your present employment?

A. That is the same.

Q. In other words, for at least the past eight or nine years that has been your employment, maintenance and inspecting of apartment houses and things like that?

A. Yes.

[fol. 7.] Q. Do you have any contact with any members of your family here in the United States?

A. No, not for years.

Q. Who are the members of your family in the United States?

A. I have a daughter I presume to be here. She was born here in Seattle and she wrote and told me she was coming here. I don't know, I have moved around so much, maybe she lost contact with me.

Q. You have no close contact with any member of your family?

A. No.

Q. Are you supporting her?

A. No.

Q. Are you presently married?

A. No.

Q. Are you supporting your former wife?

A. No.

Q. Do you know how many members of your immediate family are in England or Canada?

A. No, I have no knowledge. Immediate members, I haven't corresponded with them. The last I heard was from my daughter. Aside from that I haven't heard from them at all for about twenty years.

Q. How old are you, Mr. Jay?

A. Sixty two—sixty three in January.

Q. You are almost sixty three?

A. Yes.

Q. Outside of your employment have you any assets?

A. No, I haven't now.

Q. Do you have any potential assets besides your employment?

A. No, I have some money owing me but I am having difficulty in collecting it. About the only asset I would have is continued employment.

Q. Do you have any idea, roughly, just what your total debts owing you are?

A. Somewhere around \$700.

Q. So you might have potentially about \$700 if all your debtors were to pay at one time?

A. Yes.

Q. Do you have any means of employment if you were to be returned to England?

A. No, I guess I would be taking a chance, at my age

arriving there and with nothing, I wouldn't have enough money to survive until I found something.

Q. You have no contact with any members of your family and they couldn't support you until you found work?

A. No, I don't know what their circumstances are.

[fol. 8] Q. Have you attempted to contact your family at all recently?

A. No, I don't know where my father and mother is.

Q. In other words, if you were to be deported to England, you have no assurance whatsoever that you would have any support?

A. No.

Q. Are you covered by Social Security here or not?

A. Well, I have been paying on a Social Security number since 1938.

Q. Other than your inability to assure that you will be able to support yourself, do you have any other reason why you would want your deportation suspended, why you feel it is a hardship?

A. In the first place, it is a hardship, I feel this is my country. I have lived here longer than in any any other country. All my friends are here, all my relatives, all my contacts and everything else. It is like cutting myself off entirely, I feel, just like I was going to a strange land, I would be lost. And secondly, if there is a possibility of it, I would like to be able to stay here long enough to get some assets so I could at least go to Canada. Maybe I would be able to survive in Canada. I served in the Canadian Army, never missed any of their battles. I think I might be entitled.

Q. Are you a citizen of Canada?

A. I presume I am, I don't know. They didn't have what you call citizenship there. I voted there, was an official and everything else; voted in the army too, of course.

Q. Do you have any desire to become a citizen of the United States?

A. Yes, that is what I am wanting.

Q. Have you made application previous to this?

A. I made several applications and each one was returned and I have been discouraged in some way or other, so I got discouraged; and the first thing I found out they didn't have a record of my second entry.

Q. The entry from Canada in 1921?

A. Yes, they didn't have any record. I know I was interrogated, and I presumed that they did take some record. I have served in the Allied Forces and the president's proclamation said I would be able to return here because I had resided here prior to the war. Those were the statements I made when I came over the line.

Q. In any event, the reason you were unable at that time to establish citizenship in the United States is that you couldn't establish your entrance?

A. Yes, I was picked up by the Immigration officers for being here illegally and after they looked into the matter they said I was here legally and I would be no longer molested. Now then, when I made a former application for citizenship—Speed Smith was then in charge of Immigration, and he said that the simplest way out would be—that they might have lost the record, but Speed Smith wanted me to go back to Vancouver and contact the American Consul and then he would let me come back free of any quota. I pointed out I would be losing my originally obtained residence.

[fol. 9] Q. What year was that?

A. In 1923 or 1924.

Q. In any event, if this deportation order is suspended, will you ask to obtain United States citizenship?

A. Yes. I don't see why I can't be allowed since I haven't had anything to do with the Communist Party for ten years.

Q. The only thing prohibiting your naturalization is this deportation order.

A. Yes. I was reinstated by the Immigration. It was just a matter of a few minute interview on Pike Street and they looked up the record and said I was here legally. Then I got this question of citizenship when it came up, and I got a letter from Washington indicating the same thing, that it would simplify things if I would go back to the border and I would be free to come back free of any quota, but I still hesitated to do that because I would lose my residence which I had established.

By Special Inquiry Officer: Well, Mr. Jay, I think you have explained the situation. Frankly, it has no bearing

on this particular application now. Continue with your next question, if you have it, Counsel.

By Counsel to Respondent:

Q. I think I will summarize here. You have then, two reasons why you want your deportation order suspended: one, you have no assured means of support were you to be deported; and two, you are desirous of seeking citizenship if you are able to obtain suspension of deportation, is that correct?

A. Yes.

By Counsel: I don't think there is anything else at this time.

By Special Inquiry Officer to Examining Officer: You may examine Mr. Needham.

By Examining Officer: I have a Federal Bureau of Investigation record No. 347 423 B, dated May 5, 1953 relating to Cecil Reginald Jay, and I will offer it into evidence.

By Counsel: No objection.

By Special Inquiry Officer: This FBI record No. 347 423 B relative to the respondent will be received in evidence as *Reopened Exhibit 1*.

By Examining Officer to Respondent:

Q. Mr. Jay, how many times have you been married?

A. Twice.

Q. Are both your first and second wife living?

A. Well, I don't know about the first one. The second one is.

[fol. 10] Q. Where is your second wife living?

A. She is living in Tacoma now.

Q. Is she divorced from you?

A. Yes.

Q. When did the divorce occur, approximately?

A. January, 1950 or 1951.

By Special Inquiry Officer to Respondent:

Q. Was it before or after you had your last hearing here?

A. It was before.

Q. So it would be 1950, because the last time you appeared here was December 14, 1950.

By Examining Officer to Respondent:

Q. Do you contribute in any way to the support of your ex-wife?

A. No.

Q. What is your present salary?

A. Well, it is figured I get \$75 a month plus an apartment.

Q. That is your total income?

A. Yes. Of course, it was one of the conditions of the original owner. I was to have my afternoons free to do something else.

Q. As I understand your previous testimony, you have no-one dependent upon you for support in this country or any country?

A. No, that's right.

Q. Are you in good health, Mr. Jay?

A. I expect so.

Q. Is anything wrong physically with you, are you disabled in any manner?

A. No, I don't know of anything.

Q. As far as you know, you are in good health?

A. Yes.

Q. I believe you have testified that you had last entered the United States during the fall of about 1921, is that correct?

A. Yes.

Q. Since that date have you been physically present continuously in the United States?

A. Continuously, yes.

Q. You also stated that your membership in the Communist Party terminated about 1940 or 1941, is that correct?

A. Yes.

[fol. 11] Q. At any time within the last ten years have you been a member of the Communist Party?

A. No, I have not.

Q. Have you been a member of any other organization during that period that you haven't named this morning?

A. I can't recall of any. Yes, I belong to the National Association of Housing Officials. I forgot to put that in.

Q. Have you contributed any money to the support of the Communist Party during the last ten years?

A. No, I have not.

Q. Are you a subscriber to the Daily Worker?

A. No.

Q. Are you a subscriber to the People's World?

A. No, I never have been a subscriber to them.

Q. You were employed by the Seattle Housing Authority at Duwamish Building Project from June, 1944 to December, 1950, is that correct?

A. Yes.

Q. During your employment there did you ever distribute among the housing project any literature of any nature?

A. No, I have not.

Q. During the last ten years have you ever solicited anyone to join the Communist Party?

A. No.

Q. Mr. Jay, you have testified as to the hardship you thought that would be your part if you were deported to England. Do you wish to make any further statement as to why you think your deportation would be an extreme and unusual hardship?

A. Well, I think it is an unusual hardship to impose on a person when most of his life he has been in the country and then when he reaches the age of sixty he is shipped out to a country that he hasn't been associated with for thirty or forty years. I haven't had anything to do with England since about 1912. I would have to ask the British government to support me and I can't feel anything else but apprehension of that prospect, landing there with no assets.

By Examining Officer: I have no further questions.

By Special Inquiry Officer: Is the government prepared at this time to submit a report of an independent character investigation conducted relative to the character and residence of the respondent for the past ten years?

By Examining Officer: The government is not prepared at this time to submit a report of investigation. However, I will stipulate that such report, if favorable to the respondent, may be entered on the record without reopening the hearing, if agreeable with counsel for the respondent.

[fol. 12] By Counsel: That is agreeable.

By Special Inquiry Officer: Then upon receipt of independent investigation to be conducted by this Service rela-

tive to the respondent's residence and character for the past ten years, such will be received in evidence as *Re-opened Exhibit 2*, with the understanding that anything derogatory contained therein; that respondent will be given an opportunity to examine it and refute it for the record if he so desires.

By Counsel: Fine.

By Counsel to Respondent:

Q. Mr. Jay, you were asked about whether you had ever distributed literature of any nature working for the housing project. I want to make sure there is no confusion. Is it possible that you would have distributed literature for the housing project? The housing project distributes leaflets or pamphlets on how to keep up the apartment, etc.?

A. I have done that. I have printed things, I don't know whether I distributed them or not, but at one time they were uncertain how to take care of their ranges, and things like that. I might have given it to somebody else, but I don't call it distribution.

Q. What you mean, you haven't gone from door to door distributing?

A. No, they have asked me to, but I have refused.

By Counsel: No further questions.

By Examining Officer: No further questions.

By Special Inquiry Officer to Respondent:

Q. You are advised that when all the stipulated documents have been received, I will prepare my decision and such will be served upon your attorney by registered mail, and you will be given a period of time, not to exceed ten business days within which to file an appeal thereto, if you so desire. Do you understand?

A. Yes. May I say something in answer to that? There is a matter of physical infirmity. I have found out I have a hernia and I have to have an operation.

Q. Do you have any further evidence to present in support of your application?

A. No.

I certify that the foregoing is a true and correct transcript of the testimony taken by me in the above entitled case.

Joseph H. Ramquist, Shorthand Reporter. Notes recorded in Book 1098.

I certify that to the best of my knowledge and belief this record is a true report of everything stated during the course of the hearing, including oaths administered, except statements made off the record.

David S. Caldwell, Special Inquiry Officer.

[fol. 13]

RESPONDENT'S EXHIBIT "B"

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
SEATTLE DISTRICT

File No. —

Affidavit of Witness in Application for
Relief from Deportation Proceedings

In the Matter of the Application of Cecil A. Jay for suspension of deportation on departure at own expense in lieu of deportation under the provisions of Section 19(c) of the Immigration Act of February 5, 1917, as amended by the Act of June 28, 1940.

AFFIDAVIT

STATE OF WASHINGTON,
County of King, ss.

Ray C. Roberts, occupation Business, residing at 5030 19th Ave. NE, Seattle, Wash., being duly sworn, deposes and says: That he (is) a citizen of the United States; that he has personally known and been acquainted in a (business) (social) way with the applicant above mentioned; and that to (his) personal knowledge the applicant has resided at the following places: Seattle, Wash., from Jan. 1934 to Nov. 1953.

That to (his) personal knowledge the applicant (has)

conducted himself as a person of good moral character during the time of the above-mentioned residence; and that the applicant (is) attached to the principles of the Constitution of the United States and (has not) been engaged in subversive activities.

Ray C. Roberts,

Subscribed and sworn to before me this 20 day of November, 1953, at Seattle, Washington.

(Seal)

I, H. Evers, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 14]

RESPONDENT'S EXHIBIT "C"

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
SEATTLE DISTRICT

File No. —

Affidavit of Witness in Application for
Relief from Deportation Proceedings

In the Matter of the Application of Cecil A. Jay for suspension of deportation or departure at own expense in lieu of deportation under the provisions of Section 19(c) of the Immigration Act of February 5, 1917, as amended by the Act of June 28, 1940.

AFFIDAVIT

STATE OF WASHINGTON,
County of King, ss.

Rolla V. Houghton, occupation Attorney at Law, residing at 4672 Eastern Avenue, Seattle, Washington, being duly sworn, deposes and says: That he (is) a citizen of the United States; that he has personally known and been acquainted in a (social) way with the applicant above mentioned; and that to (his) personal knowledge the ap-

plicant has resided at the following place: Seattle, Washington, from July, 1934 to November, 1953.

That to (his) personal knowledge the applicant (has) conducted himself as a person of good moral character during the time of the above-mentioned residence; and that the applicant (is) attached to the principles of the Constitution of the United States and (has not) been engaged in subversive activities.

Rolla V. Houghton.

Subscribed and sworn to before me this 20 day of November, 1953, at Seattle, Washington.

(Seal)

M. H. Van Nuys, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 15]

RESPONDENT'S EXHIBIT "D"

SEATTLE HOUSING AUTHORITY
825 Yesler Way, Seattle 4, Washington

Telephone ELiot 0750

The Rt. Rev. Stephen F. Bayne, Jr., Chairman; Charles W. Doyle, Vice-Chairman; Mariel Mawer; Kenneth J. Morford; Irvine B. Rabel; Charles W. Ross, Executive Director.

AFFIDAVIT

I, J. R. Adams, the Assistant Executive Director of the Seattle Housing Authority, 825 Yesler Way, Seattle 4, Washington, hereinafter referred to as the Authority, submit the following affidavit pertaining to the employment of Cecil R. Jay, now residing at 1633 Boylston Avenue, Seattle 22, Washington.

Jr. Jay was employed by this Authority as a Maintenance Laborer on June 16, 1944 at the monthly rate of \$162.58. He was employed continuously from the aforementioned date to December 28, 1950, at which time he was removed from the payroll and placed on leave without pay pending the

clarification of his citizenship status. Said action was mandatory under the personnel policies of this Authority which require citizenship for all permanent employees.

During the period from 1944 through 1950, Mr. Jay was progressively assigned to positions of greater responsibility and, at the termination of his employment, held the position of Project Foreman at our largest project consisting of 1,300 apartments. He was responsible for the supervision of the work program and the direction of the activities of a large crew of men. His rate of pay was \$1.78 per hour or approximately \$398.50 per month without overtime. Within his period of employment with this Authority, he received seven increases in salary.

Mr. Jay was rated as one of the most conscientious and faithful employees of this Authority. His honesty was unquestioned. His interest in his work extended beyond the normal working hours and he was always willing to accept additional responsibilities without additional compensation. He was forthright in his opinions. His general moral character is evidenced by the fact that during his entire period of employment not one complaint was ever received from either the tenants or his fellow employees as to his relationships with people.

J. R. Adams, Asst. Executive Director.

Subscribed and sworn to before me this 6th day of November, 1953.

W. McIlraith, Notary Public in and for the State of Washington residing at Seattle.

[fol. 16] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

February 3, 1954

DECISION OF SPECIAL INQUIRY OFFICER

Application: Suspension of deportation pursuant to Section 244(a)(5) of Immigration and Nationality Act.

Detention Status: Released on bond.

Warrant of Arrest Served: July 18, 1949.

Discussion: This record relates to a 63 year old divorced male, a native of England and subject of Great Britain, who last entered the United States at Seattle, Washington in the fall of 1921. That entry has not been verified. He has testified that he was a voluntary member of the Communist Party of the United States from 1935 through 1940, during which time he held various offices in the Communist Party, such as literature agent and district organizer. The foregoing facts clearly render respondent deportable under the terms of the Act of October 16, 1918, as amended, on the charge lodged during the course of the hearing. In view of this finding no consideration is being given to the charges contained in the warrant of arrest.

Respondent has applied for the privilege of suspension of deportation under Section 244(a)(5) of the Immigration and Nationality Act. As the respondent has not been found to have been a Communist Party member later than 1940, it follows that more than ten years has elapsed since the assumption of the status which constitutes the ground for his deportation. Evidence of record, consisting of affidavits of persons well acquainted with the respondent, together with employment records, as well as a report of an investigation [fol. 17] by this Service, satisfactorily establishes that he has been physically present in the United States for a continuous period of not less than ten years last past. A check of the local and Federal records reveals no criminal record. An independent character investigation, as well as the above related affidavits tend to establish that for the ten years

immediately preceding his application for relief, he has been a person of good moral character.

Respondent has no one dependent upon him for support. To his knowledge he has no near relatives in the United States. He is presently employed as an apartment house manager, receiving \$75.00 a month and an apartment. He estimates his assets to be \$50.00 in cash and debts owed him in the approximate sum of \$700 if all his debtors would pay up. He has stated that if he were deported he would suffer extreme and unusual hardship in that he would be separated from relatives and friends, and in effect that he would find it almost impossible to maintain himself because of lack of funds. On the record, respondent appears to be qualified for suspension of deportation. However, after considering confidential information relating to the respondent, as is provided for under 8 C.F.R. 244.3, it is concluded that the respondent's case does not warrant favorable action and that his application for suspension of deportation be denied.

Findings of Fact: Upon the basis of all the evidence presented it is found:

- (1) That the respondent is an alien, a native of England and subject of Great Britain;
- (2) That the respondent last entered the United States at Seattle, Washington during the fall of 1921;
- (3) That from 1935 through 1940 respondent was a voluntary member of the Communist Party of the United States.

Conclusion of Law: Upon the basis of the foregoing findings of fact, it is concluded:

That under the Act of October 16, 1918, as amended, respondent is subject to deportation in that he was, after entry, a member of the following class set forth in Section 1 of said Act: An Alien who was a member of the Communist Party of the United States.

Order: It is ordered that the alien be deported from the United States in the manner provided by law on the following lodged charge:

The Act of October 16, 1918, as amended, in that he was, after entry, a member of the following class set

forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

David S. Caldwell, Special Inquiry Officer.

[fol. 18] U. S. DEPARTMENT OF JUSTICE

Board of Immigration Appeals

DECISION OF BOARD OF IMMIGRATION APPEALS—April 9, 1954
File: E-953646—Seattle (A-3444079).

In re: Cecil Reginald Jay.

In Deportation Proceedings.

In Behalf of Respondent: John Caughlan, Esq., 702 Lowman Building, Seattle 4, Washington. (Brief filed.)

Charges:

Warrant: Act of October 16, 1918, as amended—After entry, alien member of organization that advocates or teaches overthrow, by force or violence, of Government of United States.

Act of October 16, 1918, as amended—After entry, alien member of organization that distributes, etc., printed matter advocating overthrow, by force or violence, of Government of United States.

Lodged: Act of October 16, 1918, as amended—After entry, alien who was member of Communist Party of United States.

Application: Suspension of deportation—Section 244(a) (5) of the Immigration and Nationality Act of 1952.

Detention Status: Released on bond.

The case comes forward on appeal from the order of the special inquiry officer dated February 3, 1954, finding the alien subject to deportation on the charge lodged during the course of the hearing, denying discretionary relief of suspension of deportation, and directing that he be deported pursuant to law.

[fol. 19] The record relates to a native of England, subject

of Great Britain, 63 years old, male, who last entered the United States at the port of Seattle, Washington, during the fall of 1921. This entry has not been verified. The evidence establishes that the respondent was a voluntary member of the Communist Party of the United States from 1935 to 1940, during which time he held various offices in the Communist Party, such as Literature Agent and District Organizer. The evidence fully establishes deportability upon the charge lodged during the course of the hearing.

Counsel in his brief argues that the respondent is not constitutionally subject to deportation. The question of the constitutionality of the Congressional enactments is not one for this Board to consider but is a matter for determination by the courts. The courts have sustained grounds of deportability based upon membership in the Communist Party subsequent to entry¹.

The respondent has applied for the privilege of suspension of deportation under Section 244(a)(5) of the Immigration and Nationality Act. The respondent has resided in the United States since 1921 and the record shows membership in the Communist Party from 1935 through 1940. He is employed as an apartment house manager, receiving \$75 a month and an apartment for himself. He appears to have no dependent relatives in the United States.

The special inquiry officer has denied the discretionary relief of suspension of deportation on the basis of confidential information considered in accordance with the provisions of 8 C. F. R. 244.3. This regulation provides that in the case of an alien qualifying for voluntary departure or suspension of deportation under the Immigration and Nationality Act, the determination as to whether the application for suspension of deportation shall be granted or denied (whether such determination is made initially or on appeal) may be predicated upon confidential information without the disclosure thereof to the applicant, if in the opinion of the officer or the Board making the determination the disclosure of such information would be prejudicial to the public interest, safety, or security. These regulations

¹ *Harisiades v. Shaughnessy*, 342 F. S. 580; *Martinez v. Neelly*, 197 F. 2d 462; *Latvia v. Nicolls*, 106 F. Supp. 658.

would appear to be a sufficient answer to counsel's contention that the denial of discretionary relief must be based solely upon matters of record.

Suspension of deportation is not a matter of right on the part of the alien, but an act of grace on the part of the Attorney General and even without the authority of regulations, resort might be had to confidential information as a basis for denial of discretionary authority. Thus the case of *U. S. ex rel. Matranga v. Mackey*,² the appellant alleged [fol. 20] he was denied due process because, in refusing to suspend deportation, the Attorney General relied in part upon confidential information. The court held, that since it was used only for its bearing on the formulation of a discretionary decision, precedents barred relief, citing *United States ex rel. James v. Shaughnessy*, 202 F. 2d 519; *United States ex rel. Kaloudis v. Shaughnessy*, 180 F. 2d 489; *United States ex rel. Adel v. Shaughnessy*, 183 F. 2d 371. The court further stated that the Attorney General, in making a discretionary determination, may consider confidential information; that there was nothing to the contrary in the regulations. There is no requirement on the part of the special inquiry officer that he specifically find that in his opinion the disclosure of the confidential information would be prejudicial to the public interest, safety, or security, as long as he finds that in point of fact such is the situation.

Upon a full consideration of the evidence of record and in light of the confidential information available, it is concluded that the alien is not entitled to discretionary relief.

Order: It is ordered that the appeal be and the same is hereby dismissed.

Thos. S. Funicane, Chairman.

